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keep small boys. *Temple v. McComb City Electric Co.*, *supra*; *Williams v. Springfield Gas & Electric Co.* (Mo.), 202 S. W. 1. So also, it has been held that an electric light company, which maintains its wires upon a bridge, is bound to exercise a very high degree of care to protect the safety of boys who, with its knowledge, are accustomed to use it as a bathing place and diving stage. *Nelson v. Branford Lighting Co.*, 75 Conn. 548, 54 Atl. 303. For the doctrine of *attractive nuisances*, see 1 VA. LAW REV. 81; 2 VA. LAW REV. 233.

In Virginia, electric companies are not held as insurers against accident, but they are held to a high degree of care in the construction and maintenance of their dangerous appliances. See *Norfolk Railway & Light Co. v. Spratley*, 103 Va. 379, 49 S. E. 502. A recovery was allowed where a small boy reached his hand through a fence, caught hold of a live wire belonging to the defendant company, and was injured thereby, the court holding that the trespass of a young child could not be set up as a defense by the telephone company. *Lynchburg Co. v. Booker*, 103 Va. 595, 50 S. E. 148.

TRUSTS—REMOVAL OF TRUSTEES—REFUSAL TO CARRY OUT TESTAMENTARY DIRECTIONS—SECRET PROFITS—MINGLING TRUST FUNDS.—The plaintiff, the testamentary trustee of deceased's estate, instituted an action for an accounting and approval by the court of his activities as trustee, and the defendant, a beneficiary under the will of the deceased, made a motion for the removal of the plaintiff as testamentary trustee. The trustee acknowledged his failure to divide the estate into six separate trusts as was stipulated in the deceased's will. It was proved that he received secret profits in selling stocks of the estate, but he offered to compensate the estate therefor upon this being discovered. The plaintiff conceded that he mingled the trust funds with his own funds and used them as his own property. *Held*, the motion for removal of the trustee is granted. *Gould v. Gould*, 178 N. Y. Supp. 37.

It is within the discretion of a court of equity, in considering the interest of the trust estate and beneficiaries, to determine whether grounds for the removal of a testamentary trustee exist. See *Jones v. Bryant*, 204 Ill. App. 609; *Baltimore Bargain House v. St. Clair*, 58 W. Va. 565, 52 S. E. 660. Refusal or neglect to follow the instructions in the testator's will is always ground for the trustee's removal. *Cavender v. Cavender*, 114 U. S. 464; *In re Hoysradt*, 45 N. Y. Supp. 841. In the latter case the trustee was directed to sell real estate "within a reasonable and convenient time" after the testator's death, but neglected to sell a part of the estate, an unproductive tract, until 24 years after he qualified as trustee. A new trustee was appointed although the original trustee had acted in good faith and his conduct had resulted in a great increase in the value of the property.

The trustee must exercise the highest degree of good faith and will not be permitted to use his trusteeship for individual advantage, benefit or profit. Thus, misconduct in office such as gross improvidence, incompetency, dishonesty or breach of trust, if it amounts to putting the trust estate in jeopardy, is sufficient ground for revocation of the

trusteeship. *Walters v. Hill*, 27 Gratt. (Va.), 388. See *Matthews v. Murchison* (C. C.), 17 Fed. 760. Mere insolvency or bankruptcy will not disqualify the trustee if it does not affect or endanger the trust fund. *Moorman v. Crockett*, 90 Va. 185, 17 S. E. 875.

The trustee should not at any time mingle the trust funds with his own, though his solvency while doing so will be a material consideration in determining whether or not he should be removed. *Sparhawk v. Sparhawk*, 114 Mass. 356; *Lowe v. Montgomery*, 117 Mo. App. 273, 92 S. W. 916. Also, where the trustee has placed himself in such a position that his personal interest has, or may come in conflict with his interest as trustee, the court will remove him without an inquiry as to whether the transactions complained of were fair or not. Thus, a testamentary trustee was disqualified from continuing in office by accepting a salary and acting as president of a corporation which was part of the trust estate. *Pyle v. Pyle*, 137 App. Div. 568, 122 N. Y. Supp. 256, 92 N. E. 1099. He must not use any of the trust funds in his own business or derive any secret profits or commissions therefrom as trustee. Nor will it be any defense to an action for removal that the trustee is willing to repay the estate for secret profits or commissions which he has made or losses which have been caused by his misconduct. *Attorney General v. Armstrong* (Mass.), 120 N. E. 678; *Gould v. Gould*, *supra*. However, mistakes, misunderstandings and the injudicious exercise of discretionary powers are not grounds for removal unless they evidence dishonesty or lack of proper capacity. *Wylie v. Bushnell* (Ill.), 115 N. E. 618; *Matthews v. Murchison*, *supra*.